

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GOTHAM DISTRIBUTING CORPORATION :
d/b/a ALPHA VIDEO DISTRIBUTORS

Plaintiff,

-against-

INTERCONTINENTAL RECORDS AND
CASSETTE, INC.,
Defendant.

SPATT, J.

-----X

LINDSAY, M.J.

Plaintiff GOTHAM DISTRIBUTING CORPORATION d/b/a ALPHA VIDEO

CV - 05 - 4052

: COMPLAINT

: 05 Civ.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

AUG 24 2005 ★

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BROOKLYN OFFICE

DISTRIBUTORS by its attorney, Eisenberg Tanchum & Levy, for its complaint alleges as follows:

The Parties

1. Plaintiff Gotham Distributing Corporation d/b/a Alpha Video Distributors ("Alpha") is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business at 60 Portland Road, Conshohocken, Pennsylvania 19428. At all relevant times plaintiff Alpha was and continues to be engaged in the business of, among other things, manufacturing, distributing, and otherwise commercially exploiting motion pictures and other video programs in the form of videocassettes and dvds.

2. Defendant Intercontinental Records and Cassette, Inc. ("Intercontinental") is, upon information and belief, a corporation organized and existing under the laws of the State of New York and having its principal place of business at 95 Oser Avenue, Hauppauge, New York 11788. Upon information and belief, at all relevant times defendant Intercontinental was and continues to be in the business of manufacturing, distributing and otherwise commercially exploiting motion pictures and other video programs in the form of videocassettes and dvds.

Jurisdiction and Venue

3. The jurisdiction of this Court is based upon 28 U.S.C. §§1331 and 1338 in that the controversy arises under an Act of Congress relating to copyright; to wit, the copyright laws of the United States (17 U.S.C. §101 *et seq.*)

4. Venue is proper under 28 U.S.C. §1391(b) in that, upon information and belief, defendant Intercontinental is found and does business in the Eastern District of New York and the claims herein arise in this District.

First Claim

5. Plaintiff Alpha repeats and realleges each and every allegation set forth in paragraphs 1 through 4 hereof with the same force and effect as if fully set forth herein.

6. In early 2003 plaintiff Alpha created original artwork for the cover of its dvd of the public domain film, "The Cocaine Fiends," (the "Original Artwork"), which film in dvd form plaintiff Alpha sold throughout the United States.

7. Plaintiff Alpha copyrighted this original artwork and is the registered copyright proprietor. A copyright registration certificate was filed on April 9, 2003 and duly recorded in the Copyright Office, Library of Congress, Washington, D.C. pertaining to the Original Artwork, bearing registration number Vau-579-445.

8. Since the date of copyright registration plaintiff Alpha has been the sole proprietor of all rights, title and interest in and to the copyright of the Original Artwork.

9. At all times prior to the commencement of this action plaintiff Alpha, in respect of the Original Artwork, has fully complied with the statutory formalities governing copyrights, including the display of appropriate notices on all copies distributed and sold to the general public.

10. Upon information and belief, sometime in 2004 defendant Intercontinental released to the public a dvd containing two films, "Reefer Madness" and "The Cocaine Fiends." (the "Intercontinental Dvd")

11. The cover artwork used by defendant Intercontinental on the Intercontinental Dvd consists in large part of plaintiff Alpha's copyrighted Original Artwork. A copy of defendant Intercontinental's cover artwork is annexed hereto as Exhibit A.

12. Defendant Intercontinental has infringed plaintiff Alpha's copyright in the Original Artwork by producing, manufacturing, distributing, selling, promoting, advertising and otherwise commercially exploiting the Intercontinental Dvd, which contains as part of its artwork the Original Artwork in violation of 17 U.S.C. §106.

13. All of defendant Intercontinental's acts of infringement were performed without the permission, license or consent of plaintiff Alpha.

14. As a result of the foregoing, plaintiff Alpha is entitled to a permanent injunction prohibiting any further manufacture, sale, distribution or other commercial exploitation of the infringing Intercontinental DVD or any other work which infringes upon the Original Artwork, and damages in an amount to be determined by this Court at a trial of this action.

Second Claim

15. Plaintiff Alpha repeats and realleges each and every allegation set forth in paragraphs 1 through 14 hereof as if more fully set forth herein.

16. Defendant Intercontinental wilfully infringed plaintiff Alpha's copyright in the Original Artwork.

WHEREFORE, plaintiff Gotham Distributing Corporation d/b/a Alpha Video Distributors, demands judgment as follows:

a. On the first claim directing:

(1) that defendant Intercontinental Records and Cassette, Inc., its agents, servants, and assigns be enjoined during the pendency of this action and permanently from infringing said copyright of plaintiff Gotham Distributing Corporation d/b/a Alpha Video Distributors in any manner;

(2) that defendant Intercontinental Records and Cassette, Inc. be required to pay plaintiff Gotham Distributing Corporation d/b/a Alpha Video Distributors such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright, and to account for and pay to plaintiff all gains, profits, and advantages derived by defendant from its infringement of plaintiff's copyright (the total amount to be determined by the Court at a trial of this action) or such damages as to the Court shall appear proper within the provisions of the copyright law, but not less than two hundred and fifty (\$250) dollars per infringement;

(3) that defendant Intercontinental Records and Cassette, Inc. be required to deliver up to be impounded during the pendency of this action all infringing dvds and other infringing material in its possession and/or under its control and to deliver up for destruction all infringing copies and all materials used for making such infringing product;

b. On the second claim, directing that plaintiff Gotham Distributing Corporation d/b/a Alpha Video Distributors be awarded the same relief as requested in the first claim of the complaint, except that in the event that plaintiff's actual damages and/or defendant's profits from the infringing work are less than one hundred fifty thousand (\$150,000) dollars per infringement, that plaintiff, in the

discretion of the Court, be awarded statutory damages in the amount of one hundred fifty thousand (\$150,000) dollars for each infringement pursuant to the provisions of 17 U.S.C. §504(C)(2);

c. On each of the first and second claims, directing pursuant to 17 U.S.C. §505 that defendant Intercontinental Records and Cassette, Inc. pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to plaintiff by the Court; and

d. Granting such other and further relief as to the Court seems just and proper.

Dated: New York, New York
August , 2005

EISENBERG TANCHUM & LEVY
*Attorneys for Plaintiff Gotham Distributing
Corporation d/b/a Alpha Video Distributors*

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Ex. A



DOUBLE FEATURE

REEFER MADNESS

COCAINE FIENDS

"The sweet pill that makes life BITTER! Women cry for it... men die for it!" "Reefer Madness" is the legendary cult classic propaganda flick about the marijuana "menace," as the tragic tale of Mac and Jack is told to parents at a PTA meeting by a high school principal.

"Crazed dope fiends on a narcotic rampage!" When drug dealer Nick stops off at a small-town diner and convinces the girl who runs it, Jane Bradford, to hide him from the cops, she gets a headache and he offers her a "headache powder" to snort. Thus begins the journey through sleazy dives, Skid Row, opium dens and unintentional hilarity that is "Cocaine Fiends."

REEFER MADNESS

Approximate running time: 68 minutes - classic black and white

COCAINE FIENDS

Approximate running time: 62 minutes - classic black and white

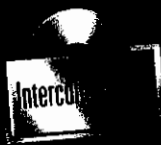
NOT RATED NOT SUITABLE FOR CHILDREN

DVD 7412



special features:

- digitally remastered • chapter selection • interactive menus



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